

AIRPORT HEIGHT CONTROL ORDINANCE
FOR
BRUNSWICK COUNTY AIRPORTS
BRUNSWICK COUNTY, NORTH CAROLINA

Prepared for:

Brunswick County Airport Commission

by:

Talbert & Bright, Inc
321 N Front Street
Wilmington, NC 28401

AIRPORT HEIGHT CONTROL ORDINANCE

FOR

BRUNSWICK COUNTY AIRPORTS

BRUNSWICK COUNTY, NORTH CAROLINA

INTRODUCTION

ENACTMENT:

AN ORDINANCE ESTABLISHING AIRPORT-RELATED ZONING REGULATIONS FOR CERTAIN AREAS OF THE COUNTY OF BRUNSWICK, NORTH CAROLINA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF NORTH CAROLINA GENERAL STATUTES 153A-340 THROUGH 153A-348 INCLUSIVE, AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH.

PREAMBLE:

WHEREAS, the General Statutes of North Carolina empower Brunswick County to enact a zoning ordinance and to provide for its administration, enforcement, and amendment, and

WHEREAS, the County Commissioners deem it necessary, for the purpose of promoting the health, safety, or general welfare of the County to enact such an Ordinance, and

WHEREAS, the County Commissioners have appointed a Board of Adjustment to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein, and

WHEREAS, airport hazards endanger the lives and property of users of airports and occupants and owners of property in their vicinity, and

WHEREAS, the creation or establishment of an airport hazard injures the community served by the airport in question, and

WHEREAS, in the interest of the public health, safety and general welfare, it is necessary that the creation or establishment of airport hazards be prevented, and

WHEREAS, the prevention of these obstructions should be accomplished, to the extent

legally possible, by the exercise of police power without compensation, and

WHEREAS, the Board of Adjustment has given reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, with a view to preventing airport hazards and protecting public interests, and

WHEREAS, the Board of Adjustment has submitted its final report to the County Commissioners, and

WHEREAS, the County Commissioners have given due public notice of hearings relating to the zoning district, regulations and restrictions, and have held such public hearings, and

WHEREAS, all requirements of the General Statutes of North Carolina, with regard to the preparation of the report of the Board of Adjustment and subsequent action of County Commissioners have been met;

NOW, THEREFORE, BE IT ORDAINED BY BRUNSWICK COUNTY, NORTH CAROLINA, AS FOLLOWS:

SECTION 1.0 GENERAL

1.1 Authority

The provisions of this Ordinance are adopted under authority granted by the General Assembly of North Carolina (General Statutes 153A-340-348).

1.2 Jurisdiction

The regulations set forth in this Ordinance shall be applicable within the area(s) shown on the respective official Brunswick County Airport Height Control Ordinance Map(s).

1.3 Conflicting Regulations

It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, provided, however, that wherever the regulations of this Ordinance require a lower height of buildings or less number of stories, or impose other higher standards than are required in any other statute or county ordinance or regulations, the provision of the regulations made under authority of this Ordinance shall govern. Wherever the provisions of any other statute or county ordinance or regulations require a lower height of buildings or a less number of stories, or impose other higher standards than are required by the regulations made under authority of this Ordinance, the provisions of such statute or county ordinance or regulations shall govern.

1.4 Title

This Ordinance shall be known as The Airport Height Control Ordinance for Brunswick County Airports, and may be cited as the Airports Height Control Ordinance.

1.5 Severability of Ordinance

If for any reason one or more sections, sentences, clauses, or parts of this Ordinance are held invalid by the courts, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrases thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

1.6 Remedies

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, the Zoning Administrator or any appropriate authority of the county or any adjacent, nearby or neighboring property owner who would be affected by such violation, in addition to other remedies, may institute injunction, mandamus or other appropriate action in proceeding to prevent the occupancy of such building, structure or land.

1.8 General Provisions

1.8.1 Application of the Height Control Ordinance

1.8.1.1 New Uses or Construction

After the effective date of this Ordinance, all new construction or use of land shall conform to the height requirements for the district in which it is to be located

1.8.1.2 Existing Conforming Situations

After the effective date of this Ordinance, land or structures which then conform to the regulations for the district in which it is located, may be continued, provided that any structural alterations or change in use shall conform with the regulations herein specified.

1.8.1.3 Existing Nonconforming Situations

After the date of adoption of this Ordinance or any prior Zoning Ordinance of Brunswick County, pre-existing lots, or structures which would be prohibited under the regulations for the district in which it is located shall

be considered as nonconforming. Nonconforming structures or uses may be continued, provided they conform to the provisions in Section 5.

1.9 Continuation of Nonconforming Situations

The continuation of nonconforming situations shall be regulated as follows:

1.9.1 Completion of Nonconforming Projects

The construction or erection of any nonconforming project may be completed provided all construction is done pursuant to a validly issued building permit.

1.9.2 Extension or Enlargement of Nonconforming Situations

Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

Physical alteration of structures or the placement of new structures on open land is unlawful if they result in:

1. An increase in the total amount of space devoted to a nonconforming use, or
2. Greater nonconformity with respect to height limitations.

Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

1.10 Use Restrictions

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. The owner of any existing nonconforming structure or tree or other vegetation is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the respective Brunswick County airport to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of Brunswick County.

SECTION 2.0 DEFINITIONS

2.1 General

For the purpose of this Ordinance certain terms or words used herein shall be interpreted as follows.

2.2 Tense and Number

- (1) The present tense includes the future tense and the future tense includes the present tense.
- (2) The singular number includes the plural number and the plural number includes the singular number.

2.3 Word Interpretations

- (1) The word "may" is permissive.
- (2) The words "shall" and "will" are mandatory.
- (3) The word "County" shall mean the County of Brunswick, North Carolina.
- (4) The words "Board of Adjustment" shall mean the Brunswick County Board of Adjustment.
- (5) The words "County Commissioners" shall mean County Commissioners of Brunswick County, North Carolina.
- (6) The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
- (7) The words "used" or "occupied" include the words intended, designed, or arranged to be used or occupied.
- (8) The word "lot" includes the words plat or parcel.

2.4 Definitions

1. AIRPORT - Any general aviation airport located within the jurisdiction of Brunswick County.
2. AIRPORT ELEVATION - The highest point of an airport's usable landing area measured in feet above sea level.
3. APPROACH SURFACE - A surface longitudinally centered on the extended

runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 4 of this Ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

4. APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES - These zones are set forth in Section 3 of this Ordinance.
5. BOARD OF ADJUSTMENT - The Zoning Board of Adjustment of the County of Brunswick.
6. CONICAL SURFACE - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
7. EXCEPTED HEIGHT LIMITATIONS - Means nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree or other vegetation to a height up to fifty (50) feet above the surface of the land.
8. HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
9. HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
10. HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
11. LARGER THAN UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.
12. NONCONFORMING USE OR STRUCTURE- A structure, land, or premises, individually or in combination, the use, dimensions, or other characteristics of which were established and lawful prior to passage of this chapter or amendment hereof, but which would not be permitted to be built or use in the same manner under the terms of this Chapter or amendment hereof.
13. NONPRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

14. OBSTRUCTION - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 4 of this Ordinance.
15. PERSON - An individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
16. PRECISION INSTRUMENT RUNWAY - a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved Airport Layout Plan or any other planning document.
17. PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. The width of the primary surface is set forth in Section 3 of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
18. RUNWAY - A defined area on an airport prepared for landing and take-off of aircraft along its length.
19. RUNWAY ENDS - Refers to the existing physical end of the hard-surfaced asphalt runway and/or the future end of the runway, as shown on the attached airport map(s).
20. STRUCTURE - Anything, excluding paving, constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, screened enclosure, fences, advertising signs, billboards, poster panels, swimming pools, manufactured houses, modular houses, and underground shelters.
21. TRANSITIONAL SURFACES - These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.
22. TREE - Any object of natural growth.
23. ZONING ADMINISTRATOR - The Zoning Administrator is the Brunswick County Zoning Administrator.

SECTION 3.0 AIRPORT ZONES

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Brunswick County airports. Such zones may be shown on the Height Control Ordinance Map(s), which are attached to this Ordinance and made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

3.1 Precision Instrument Runway Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

3.2 Runway Larger Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

3.3 Transitional Zones

The transitional zones are the areas beneath the transitional surfaces.

3.4 Horizontal Zone

The horizontal zone is established by swinging arcs of 10,000 feet from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

3.5 Conical Zone

The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward and upward therefrom for a horizontal distance of 4,000 feet.

SECTION 4.0 AIRPORT ZONE HEIGHT LIMITATIONS

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

4.1 Runway Larger Than Utility With a Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

4.2 Precision Instrument Runway Approach Zone

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

4.3 Transitional Zones

Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 25 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.

4.4 Horizontal Zone

Established at 150 feet above the airport elevation.

4.5 Conical Zone

Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation; will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Adjustment unless a copy of the application has been furnished to the respective Brunswick County airport through the Planning Department, or other designated County official, for advice as to the aeronautical effects of the variance. If the respective Brunswick County airport does not respond to the application within thirty days (30) after receipt, the Board of Adjustment may act on its own to grant or deny said application.

6.5 Obstruction Marking and Lighting

Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the respective Brunswick County airport, at its own expense, to install, operate, and maintain the necessary markings and lights.

SECTION 7.0 ZONING BOARD OF ADJUSTMENT

7.1 The Zoning Board of Adjustment for the purposes of this Height Control Ordinance for Brunswick County airports shall be one in the same as per the Brunswick County Zoning Ordinance.

7.2 Powers and Duties

The powers and duties of the Board of Adjustment for the purposes of this Height Control Ordinance for Brunswick County airports shall be consistent with the powers and duties as per the Brunswick County Zoning Ordinance.

SECTION 8.0 CHANGES AND AMENDMENTS

The Brunswick County Board of Commissioners may amend, supplement, or change the text regulations and Airport Height Control Ordinance Map(s) according to the procedures set forth in the Brunswick County Zoning Ordinance.

SECTION 9.0 ADMINISTRATION AND ENFORCEMENT

Administration and enforcement of the Airport Height Control Ordinance for Brunswick County airports shall be in accordance with the administration and enforcement of the Brunswick County Zoning Ordinance.

- a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
- b. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 5,300 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
- c. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section 4, paragraph 4.6.

6.2 Existing Uses

No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

6.3 Nonconforming Uses Abandoned or Destroyed

Whenever the Zoning Administrator or other designated County official determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down (or damaged more than 80% of the current Brunswick County tax value), physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

6.4 Variances

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation

4.6 Excepted Height Limitations

Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

4.7 This Ordinance only applies to the airports located in the jurisdiction of Brunswick County.

SECTION 5.0 NONCONFORMING USES

5.1 Regulations Not Retroactive

The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

5.2 Marking and Lighting

Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Zoning Administrator or other designated County official to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the respective Brunswick County airport.

SECTION 6.0 PERMITS

6.1 Future Uses

Except as specifically provided in a. and b. hereunder, no material change shall be made in the use of land which results in creation of an aviation hazard, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section 6, paragraph 6.4.

Adoption of this Ordinance repeals Ordinance No. 58, Zoning Ordinance to Limit Height of Objects around Brunswick County Airport adopted January 3, 1984.

This Ordinance shall be effective upon adoption.

Duly adopted this 6th day of June, 1999.

BRUNSWICK COUNTY BOARD OF COMMISSIONERS



ATTEST:

Joe Alex Simmons
CHAIRMAN

Joe C. Johnson

Clerk to the Board

